

Assembly Bill No. 703

CHAPTER 849

An act to add and repeal Division 36 (commencing with Section 71200) of the Public Resources Code, relating to ballast water.

[Approved by Governor October 8, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 703, Lempert. Ballast water.

Existing law requires the Department of Fish and Game to adopt the International Maritime Organization's "Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ships' Ballast Water and Sediment Discharges" as the policy of the state to prevent the introduction and spread of aquatic nuisance species into any river, estuary, bay, or coastal area through the exchange of ballast water of vessels prior to entering those waters and to adopt a ballast water control report form to monitor compliance with those guidelines.

This bill, with certain exceptions, would require the master, operator, or person in charge of a vessel to employ prescribed ballast water management practices for ballast water carried into the waters of the state from areas outside the exclusive economic zone, as defined. The bill would require those persons to take certain actions to minimize the uptake and release of nonindigenous species. The bill would require the master, owner, operator, agent, or person in charge of a vessel carrying ballast water into waters of the state after operating outside the exclusive economic zone to provide the State Lands Commission, and maintain on board the vessel, specified information.

The bill would require the State Lands Commission to take samples of ballast water and sediment and to take other action to assess the compliance of any vessel with prescribed requirements. The bill would prohibit, unless required by federal law, any state agency from imposing requirements different from those contained in the bill relating to the discharge of ballast water for the purpose of limiting the introduction of nonindigenous species prior to January 1, 2004. The bill would, on or before December 1, 2002, require the State Water Resources Control Board to evaluate alternatives for managing ballast water, as specified. The bill would require the Department of Fish and Game to conduct a study relating to resident nonindigenous species populations, as prescribed. The bill would, on or before September 1, 2002, require the State Lands Commission to submit to the Legislature, and make available to the public, a report

relating to ballast water. The bill would require the state board, the State Lands Commission, and the Department of Fish and Game to conduct prescribed research.

The bill would subject a person who fails to comply with the ballast water management program required to be undertaken by the bill with prescribed civil penalties. The bill would require the State Lands Commission to establish fees not to exceed \$1,000 per vessel, as specified. The bill would require the money generated by the imposition of the fees and the penalties to be deposited in the Exotic Species Control Fund, which the bill would create. The money in the fund, upon appropriation by the Legislature, would be available to carry out the ballast water management program, as described above.

The provisions of this bill would be repealed on January 1, 2004.

The people of the State of California do enact as follows:

SECTION 1. Division 36 (commencing with Section 71200) is added to the Public Resources Code, to read:

DIVISION 36. BALLAST WATER MANAGEMENT FOR
CONTROL OF NONINDIGENOUS SPECIES

CHAPTER 1. GENERAL PROVISIONS

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) “Ballast tank” means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) “Ballast water” means any water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) “EEZ” means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles.

(d) “Exchange” means to replace the water in a ballast tank using either of the following methods:

(1) “Flow through exchange,” means to flush out ballast water by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(2) “Empty/refill exchange,” means to pump out, until the tank is empty or as close to 100 percent as the master or operator determines is safe to do so, the ballast water taken on in ports, or

estuarine or territorial waters, then refilling the tank with mid-ocean waters.

(e) “Mid-ocean waters” means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(f) “Nonindigenous species” means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another.

(g) “Person” means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, or association.

(h) “Sediments” means any matter settled out of ballast water within a vessel.

(i) “Waters of the state” means any surface waters, including saline waters, that are within the boundaries of the state.

(j) “Voyage” means any transit by a vessel destined for any California port from a port or place outside the EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of this division, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.

71201. (a) This division applies to all vessels, United States and foreign, carrying ballast water into the waters of the state after operating outside the EEZ, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel in areas less than 200 nautical miles from any shore, or with water that is less than 2,000 meters (6,560 feet, 1,093 fathoms) deep.

71201.5. This division does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

71202. This division does not apply to any of the following vessels:

(a) A crude oil tanker engaged in the coastwise trade, as implemented by the United States Coast Guard in accordance with the National Invasive Species Act of 1996.

(b) A passenger vessel equipped with a functioning treatment system designed to kill nonindigenous species in the ballast water if both of the following apply:

(1) The State Lands Commission has determined that the system is at least as effective as ballast water exchange at reducing the risk of transfer of nonindigenous species in the ballast water of passenger vessels.

(2) The master, operator, or person in charge of the vessel operates, or ensures the operation of, the treatment system as designed.

(c) A vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of Section 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in Section 1322(a)(14) of Title 33 of the United States Code that is subject to the “Uniform National Discharge Standards for Vessels of the Armed Forces” pursuant to Section 1322(n) of Title 33 of the United States Code.

(d) A vessel that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than mid-ocean waters.

(e) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States. However, it is the intent of the Legislature that a vessel described in this subdivision does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state, unless the vessel meets the requirements of Section 71204.

CHAPTER 2. BALLAST WATER MANAGEMENT REQUIREMENTS

71203. (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) (1) The master, operator, or person in charge of a vessel is not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, it is the intent of the Legislature that the master, operator, or person in charge of the vessel consider taking all feasible measures that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

71204. (a) Subject to Section 71203, the master, operator, or person in charge of a vessel shall employ at least one of the following ballast water management practices for ballast water carried into the waters of the state from areas outside the EEZ:

(1) Exchange ballast water outside the EEZ, from an area not less than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, before entering the waters of the state.

(2) Retain the ballast water on board the vessel.

(3) Use an alternative environmentally sound method of ballast water management that has been approved by the State Lands Commission before the vessel begins the voyage, and that is at least as effective as ballast water exchange in removing or killing nonindigenous species.

(4) Discharge ballast water to an approved reception facility.

(5) Under extraordinary conditions, conduct a ballast water exchange within an area agreed to by the State Lands Commission at the time of the request.

(b) Subject to Section 71203, the master, owner, operator, or person in charge of all vessels equipped with ballast water tanks that operate in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(1) Avoid the discharge or uptake of ballast water in areas within or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs.

(2) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(A) Areas known to have infestations or populations of harmful organisms and pathogens.

(B) Areas near a sewage outfall.

(C) Areas near dredging operations.

(D) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be more turbid.

(E) In darkness when bottom-dwelling organisms may rise up in the water column.

(F) Where propellers may stir up the sediment.

(3) (A) Clean the ballast tanks regularly to remove sediments.

(B) Clean the ballast tanks in mid-ocean waters or under controlled arrangements in port, or at drydock.

(C) Dispose of sediments in accordance with local, state, and federal law.

(4) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(5) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(6) Remove fouling organisms from hull, piping, and tanks on a regular basis and dispose of any removed substances in accordance with local, state, and federal law.

(7) Maintain a ballast water management plan that was prepared specifically for the vessel.

(8) Train the master, operator, person in charge, and crew, on the application of ballast water and sediment management and treatment procedures.

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying ballast water into the waters of the state after operating outside the EEZ shall provide the information described in subdivision (c) in electronic or written form to the State Lands Commission before the vessel departs from the first port of call in California.

(2) The information described in subdivision (c) shall be submitted using the form developed by the United States Coast Guard pursuant to the National Invasive Species Act of 1996.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the State Lands Commission before the vessel departs the waters of the state.

(c) (1) The master, owner, operator, or person in charge of a vessel carrying ballast water into the waters of the state after operating outside the EEZ, shall maintain on board the vessel, in written form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of Registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, and total number of ballast water tanks in ballast, using units of measurements such as metric tons (MT), cubic meters (m³), long tons (LT), and short tons (ST).

(D) Ballast Water Management, including all of the following information:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.



(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange conducted, of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, which shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

71206. (a) The State Lands Commission, in coordination with the United States Coast Guard, shall take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the State Lands Commission, upon request of that commission, the records required by Section 71205.

(c) The State Lands Commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

71207. (a) This division describes the state program to regulate discharges of ballast water from vessels in order to limit the introduction of nonindigenous species. Unless required by federal

law, a state agency, board, commission, or department shall not, prior to January 1, 2004, impose any requirements that are different from those set forth in this division.

(b) Nothing in this division restricts state agencies from enforcing the provisions of this division.

(c) Any person violating this division is subject to civil liability in accordance with Chapter 5 (commencing with Section 71216).

(e) The State Lands Commission may require any vessel operating in violation of this division to depart the waters of the state and exchange, treat or otherwise manage the ballast water at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel architecture design, equipment failure, or any other extraordinary condition.

CHAPTER 3. RESEARCH AND PROGRAM EVALUATION

71210. (a) The State Water Resources Control Board, in consultation with the Department of Fish and Game, the State Lands Commission, the United States Coast Guard, the regulated industry, and other stakeholders, shall evaluate alternatives for treating and otherwise managing ballast water for the purpose of eliminating the discharge of nonindigenous species into the waters of the state or into waters that impact the waters of the state. Whenever possible, the evaluation shall utilize appropriate existing data.

(b) The evaluation shall be completed and submitted to the Legislature and available to the public, on or before December 31, 2002, and shall include, but not be limited to, a description of recommended best available technologies that reflect the greatest degree of reduction in the release of nonindigenous species that is economically feasible, the relative effectiveness of those technologies in minimizing the discharge of nonindigenous species, and the costs of implementing those technologies.

71211. (a) The Department of Fish and Game, in consultation with the State Water Resources Control Board, the State Lands Commission, and the United States Coast Guard, shall conduct a study to establish baseline conditions in the coastal and estuarine waters of the state, which includes an inventory of the location and geographic range of resident nonindigenous species populations. Whenever possible, the study shall utilize appropriate existing data.

(b) The study shall be submitted to the Legislature, and available to the public, on or before December 31, 2002. Information generated by this study shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

(1) The determination of alternative discharge zones.

(2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.

(3) The long-term effectiveness of discharge control measures.

(4) The assessment of potential risk zones where uptake shall be prohibited.

71212. Notwithstanding Section 7550.5 of the Government Code, on or before September 1, 2002, the State Lands Commission, in consultation with the State Water Resources Control Board, the Department of Fish and Game, and the United States Coast Guard, shall submit to the Legislature, and make available to the public, a report that includes, but is not limited to, all of the following:

(a) A summary of the information provided in the ballast water discharge report forms submitted to the State Lands Commission, including the volumes of ballast water exchanged, volumes discharged into state waters, types of ballast water treatment, and locations at which ballast water was loaded and discharged.

(b) Monitoring and inspection information collected by the State Lands Commission pursuant to this division, including a summary of compliance rates, categorized by geographic area and other groupings as information allows.

(c) An analysis of the monitoring and inspection information, including recommendations for actions to be undertaken to improve the effectiveness of the monitoring and inspection program.

(d) An evaluation of the effectiveness of the measures taken to reduce or eliminate the discharge of nonindigenous species from vessels, including recommendations regarding action that should be taken to improve the effectiveness of those measures.

(e) A summary of the research completed during the two-year period that precedes the release of the report, and ongoing research, on the release of nonindigenous species by vessels, including, but not limited to, the research described in Section 71213.

71213. The State Water Resources Control Board, the State Lands Commission, and the Department of Fish and Game shall conduct any research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate such a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast water to reduce or eliminate the discharge or establishment of nonindigenous species.



CHAPTER 4. EXOTIC SPECIES CONTROL FUND

71215. (a) The Exotic Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used to carry out this division.

(b) (1) The State Lands Commission shall establish a reasonable and appropriate fee to carry out this division in an amount not to exceed one thousand dollars (\$1,000) per vessel voyage. This amount may be adjusted for inflation every two years.

(2) In establishing fees, the State Lands Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The fee shall be collected by the State Board of Equalization from the owner or operator of each vessel that enters a California port with ballast water loaded from outside the EEZ.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Exotic Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Exotic Species Control Fund.

CHAPTER 5. CIVIL PENALTIES

71216. (a) Except as provided in subdivision (b) or (c), any person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount which shall not exceed five thousand dollars (\$5,000) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) Any person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount which shall not exceed five hundred dollars (\$500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) Any person who, knowingly and with intent to deceive, falsifies a ballast water control report form may be liable for an administrative civil penalty in an amount which shall not exceed five thousand dollars (\$5,000) per violation. Each day of a continuing violation constitutes a separate violation.



(d) The employees designated by the Executive Officer of the State Lands Commission may enforce the requirements of this division.

(e) Any violation of this division may be referred by the Executive Officer of the State Lands Commission to the administrator for oil spill response, as appointed by the Governor pursuant to Section 8670.4 of the Government Code, for the purpose of imposing administrative civil penalties.

(f) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to this division. Any hearing required shall be conducted pursuant to Section 8670.68 of the Government Code.

CHAPTER 6. REPEAL

71271. This division shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

